

SERVED: December 7, 2004

NTSB Order No. EA-5126

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 7th day of December, 2004

MARION C. BLAKEY,
Administrator,
Federal Aviation Administration,

Complainant,

v.

WILLIAM C. BEVAN,

Respondent.

Docket SE-17189

ORDER DISMISSING APPEAL

On November 8, 2004, respondent filed a notice of appeal from the law judge's October 19, 2004, order dismissing respondent's appeal from the Administrator's 30-day suspension of his private pilot certificate based on his alleged unauthorized operation in prohibited airspace.¹ Section 821.47 of the Board's Rules of Practice (49 CFR Part 821),² requires that an appeal

¹ In his order the law judge found that respondent had not shown good cause for his untimely appeal from the Administrator's order of suspension.

² Section 821.47 provides, in part, as follows:

§ 821.47 **Notice of Appeal.**

A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving upon the other parties, a notice of

from a decision of a law judge be filed within 10 days after the service date of the order.³

The time for filing a notice of appeal from the law judge's order expired on October 29. Therefore, respondent's notice was filed 10 days late. Without good cause to excuse a failure to file a timely notice of appeal, or a timely request to file one out of time, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988).

Respondent argues that his late appeal should be accepted because: (1) when he received the faxed copy of the law judge's October 19 order, he did not receive the last page containing appeal rights, including time limits; (2) his employment with the Federal Bureau of Investigation (FBI) has resulted in his schedule being "extremely disrupted"; and (3) he has been "focused on" a criminal summons he received⁴ in a separate court action related to his divorce case.

None of the factors cited by respondent constitute good cause for his untimely appeal. His claim that he did not receive the last page of the fax copy of the law judge's order is not corroborated by the fax transmittal confirmation sheet contained in the docket file, which shows that all 5 pages were successfully transmitted. But even assuming he did not receive the last page of the fax, respondent's argument that he was not given adequate notice of the time limit for appeal would fail, because the law judge's order was also mailed to his home address,⁵ in addition to being faxed to his office. He has not claimed that the mailed copy was also missing the appeal rights page. Further, respondent was also sent a full copy of the Board's rules of practice on September 9, 2004, when his (untimely) appeal and answer from the Administrator's order was docketed.

Regarding respondent's contention that his employment with

(..continued)

appeal, within 10 days after the date on which the oral decision was rendered or the written initial decision or appealable order was served.

³ The service date appeared on the face of the order.

⁴ The summons is dated, and was apparently faxed to respondent, on October 8, and requires respondent to appear in court on November 8.

⁵ The order was sent by both certified and regular mail. Although the certified mail copy was eventually returned to the Board as "unclaimed", the regular mail copy was not returned, and respondent has not alleged that he did not receive it.

the FBI should excuse his late filing, we note that he made a similar argument in explaining his late-filed appeal from the Administrator's order of suspension. The law judge's disposition of his claim in that context is equally applicable here:

"[respondent] fails to state, much less document, how his FBI duties prevented him from filing an appeal...Respondent has, thus, not shown that employment-related exigencies rendered him unable to file a timely appeal." Similarly, respondent has provided no evidence or persuasive argument to explain how his receipt of the criminal summons in his divorce case rendered him unable to file a timely appeal.

Therefore, respondent's assertions do not constitute good cause for his failure to file a timely appeal.

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's notice of appeal is dismissed.

Ronald S. Battocchi
General Counsel